

Message Text

CONFIDENTIAL

PAGE 01 STATE 182676

63

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TO USMISSION NATO

INFO AMEMBASSY VIENNA

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C O N F I D E N T I A L STATE 182676

E.O. 11652: GDS

TAGS: PARM, NATO

SUBJECT: MBFR: PRIVILEGES AND IMMUNITIES

REF: (A) STATE 178769 (NOTAL); (B) USNATO 4148 (NOTAL)
(C) USNATO 4287

1. ON FURTHER EXPERT EXAMINATION OF QUESTION OF IMMUNITIES
IN VIENNA, FOLLOWING IS REVISED GUIDANCE FOR MISSION, SUPER-
SEDING STATE 178769. WE SUGGEST MISSION DRAW ON IT FIRST
WITH UK REPS, AND ALSO ADVISE ITALIAN AND ANY OTHER DELE-
GATIONS WHICH HAVE AGREED WITH THE UK VIEW SINCE SEPTEM-
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PAGE 02 STATE 182676

BER 11 SPC DISCUSSION, PRIOR TO SUCH FURTHER DISCUSSION IN

SPC AS MAY BE NECESSARY. MISSION SHOULD FURTHER RECOMMEND THAT, IN LIGHT OF NEW INSTRUCTIONS, UK, AND OTHERS AS APPROPRIATE, NOT SEND NOTE DESCRIBED IN REF (B) TO GOA, INDICATING THAT FOR OUR PART WE DO NOT BELIEVE USG NOTE OF THIS SORT WOULD BE DESIRABLE AT PRESENT.

2. DEPARTMENT LEGAL EXPERTS DO NOT SHARE FCO'S CONCERNS ABOUT LEGAL EFFECTIVENESS OF PLAN TO PROVIDE PRIVILEGES AND IMMUNITIES TO MEMBERS OF NATO INTERNATIONAL SECRETARIAT UNDER VIENNA CONVENTION ON DIPLOMATIC RELATIONS BY ATTACHING THEM TO NATIONAL ALLIED EMBASSIES.

3. USG WOULD NOT, BY ASKING AUSTRIANS FOR SPECIAL ARRANGEMENTS AS PROPOSED BY UK IN REF (B), WISH TO ADMIT IN

PRINCIPLE THAT LOCAL COURT (WHETHER IN AUSTRIA OR IN UK) MAY LEGALLY ASSUME OR EXERCISE JURISDICTION TO LOOK INTO WHETHER PERSON ACCEPTED BY RECEIVING GOVERNMENT AS MEMBER OF STAFF OF EMBASSY IS ACTUALLY PERFORMING DIPLOMATIC FUNCTIONS AND TO DECIDE WHETHER PRIVILEGES AND IMMUNITIES SHOULD IN FACT BE ACCORDED. IT WELL KNOWN THAT EMBASSY STAFFS INCLUDE PERSONS WHO PERFORM FUNCTIONS OTHER THAN TRADITIONAL DIPLOMATIC FUNCTIONS SUCH AS THOSE LISTED IN ARTICLE 3 OF VIENNA CONVENTION. THESE PERSONS, PROPERLY ACCREDITED, ARE ENTITLED TO PRIVILEGES AND IMMUNITIES WITHOUT QUESTION OR RESERVATION. WE CONSIDER IT TO BE UNIVERSALLY ACCEPTED THAT ONLY REMEDY AVAILABLE TO RECEIVING STATE IS TO DECLARE NON-ACCEPTANCE OR PNG.

4. UNDER ARTICLE 9 OF VIENNA CONVENTION RECEIVING STATE MAY AT ANY TIME, INCLUDING PRIOR TO ARRIVAL, DECLARE ANY MEMBER OF EMBASSY EITHER NOT ACCEPTABLE OR PERSONA NON GRATA. THEN, ONLY IF THE SENDING STATE FAILS TO RECALL OR TERMINATE FUNCTIONS OF SUCH PERSON WITHIN REASONABLE TIME MAY THE RECEIVING STATE REFUSE TO RECOGNIZE SUCH PERSON AS A MEMBER OF THE MISSION. THUS, IF GOA, AFTER RECEIVING NOTICE, DOES NOT DECLARE MEMBERS OF NATO INTERNATIONAL SECRETARIAT ATTACHED TO NATIONAL EMBASSIES EITHER UNACCEPTABLE OR PERSONA NON GRATA, GOA WOULD BE OBLIGATED TO PROVIDE PRIVILEGES AND IMMUNITIES. IT WOULD BE RESPONSIBLE.

CONFIDENTIAL

PAGE 03 STATE 182676

BILITY OF GOA TO LIVE UP TO ITS INTERNATIONAL OBLIGATIONS AND TO ENSURE THAT ITS COURTS ACT CONSISTENTLY WITH THOSE OBLIGATIONS. RUSH

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